**NOT PRECEDENTIAL - NOT FOR PUBLICATION**

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**
**DIVISION OF ST. THOMAS AND ST. JOHN**

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>DION BROOKES, MERVIN DORIVAL, BERNARD GABRIEL, DANNY RAWLINS, ROBERT RAWLINS, CLYDE EDINBOROUGH, JR., MELEEK SYLVESTER, ROY BREWLEY, BRENT DONOVAN, STEFON WILSON, RYAN ALI HENDRICKSON, and ALRIC THOMAS,<br><br>Defendants. | ) | CRIM. NO. 2004-0154 |

**APPEARANCES**

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**MEMORANDUM OPINION**

**Finch, Chief Judge**

This matter comes before the Court on Defendant Clyde Edinborough Jr.'s ("Defendant" or "Edinborough") Motion to Suppress Post-Arrest Statements and Motion to Suppress the Mobile Phone and Pager identified by the numbers (340) 998-9623 and (888) 737-7838, respectively, and the phone numbers stored therein. Hearing on Defendant's motions was held on May 25, 2005. For

the reasons expressed below, this Court will deny Defendant's motions.

**I. Evidence**

On September 3, 2004, pursuant to an arrest warrant, Drug Enforcement Agency ("DEA") agents seized Edinborough outside his place of employment. He was handcuffed, placed into a DEA vehicle and transported to the DEA office in St. Thomas. According to the testimony of Special Agent Darnell Blake ("Blake"),[1] prior to and upon arriving at the DEA office, Edinborough continuously asked Blake why he was being arrested. After Edinborough was processed he was taken to a DEA interview room where Blake begin answering Edinborough's question as to why he was arrested.

The exchange between Blake and Defendant proceeded as follows. Blake testified he told Edinborough that he observed him pull up in a red pick-up truck where "he met a guy in a park." According to Blake, Edinborough then stated, "I don't have a red pick-up truck." At which point, Blake stopped Edinborough and told him he did not want him to say anything, but rather he just wanted Edinborough to listen. Next, Blake told Defendant that "when he met the individual in the park he gave him a suitcase and that the suitcase was later seized in Miami with 6 [kilograms] in it." Blake then read Defendant the Miranda warnings from a "Statement of Rights" form and asked him if he understood those warnings. Edinborough responded he did understand the warnings. Edinborough then stated that "he did meet a guy in the park" and that "[h]e gave him a suitcase with liquor in it." Edinborough also stated that he "knew you guys were coming for me." At this point, Blake asked Defendant if he wanted to talk to the agents now or if he wanted to talk to his attorney

[1] Blake was the only witness to testify at the hearing on Edinborough's motions to suppress.

first. Blake responded, "I think I need to talk to an attorney." Blake then gave Defendant the form which contained the Miranda warnings he had read him earlier. Defendant signed that portion of the form indicating that he understood his rights. However, he did not sign that portion indicating that he was willing to speak with the agents.

Also at issue are a cell phone and pager seized from Defendant's person at the time of his arrest. The phone numbers stored on the cell phone and pager were later accessed and recorded by the DEA agents. Defendant moves to suppress not only his statements to Special Agent Blake but also the numbers seized from the cell phone and pager.

## II. Discussion

### A. Legal Standard

Once a defendant is in custody "certain procedural safeguards are necessary to protect [his or her] Fifth and Fourteenth Amendment privilege against compulsory self-incrimination."[2] Rhode Island v. Innis, 446 U.S. 291, 297 (1980) (citing Miranda v. Arizona, 384 U.S. 436 (1966)). Hence, "once a defendant in custody asks to speak with a lawyer, all interrogation must cease until a lawyer is present." Innis, 446 U.S. at 293 (citing Miranda, 384 U.S. at 474). Further, in Innis, the Supreme Court considered for the first time the meaning of "interrogation." The Court held that "the term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Id.

[2] The Fourth, Fifth, Sixth and Fourteenth Amendments have been extended to the United States Virgin Islands by Section 3 of the Revised Organic Act of 1954, 48 U.S.C. § 1561, entitled "Bill of Rights."

at 301. Where a defendant seeks to suppress a post-arrest statement, the government bears the burden of establishing by a preponderance of the evidence that the statement was not the product of custodial interrogation conducted in the absence of Miranda warnings. Colorado v. Connelly, 479 U.S. 157 (1986).

The Fourth Amendment to the United States Constitution protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."[3] Warrantless searches and seizures, subject only to a few specifically established and well-delineated exceptions, are unreasonable. Horton v. California, 496 U.S. 128, 133 & n.4 (1990).

Moreover, where a search is done without a warrant, the burden shifts to the government to show, by a preponderance of the evidence, that the warrantless search was conducted pursuant to one of the exceptions to the warrant requirement. United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir.1992). With these standards in mind, the Court turns to consideration of Defendant's suppression motions.

**B. Edinborough's Post-Arrest Statements**

There is no doubt that Defendant was in custody at the time he made the statements to Special Agent Blake. The issue for decision is whether Blake's statements to Defendant constituted the functional equivalent of "interrogation." Whether or not Defendant waived his Miranda rights need only be decided if the Court finds that Defendant was subject to custodial interrogation. Alston v. Redman, 34 F.3d 1237, 1244 (3d Cir. 1994).

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[3] See note 2, supra.

Defendant argues that Blake's statements to him regarding the reasons for his arrest constitute the functional equivalent of interrogation. The Court disagrees. On facts similar to those of the instant case, the Third Circuit held that the police officer's act of telling the defendant why he was arrested in response to the defendant's request did not constitute an interrogation and the suspect's voluntary, incriminating statements would therefore not be suppressed. United States v. Benton, 996 F.2d 642 (3d Cir.), cert. denied, 510 U.S. 1016 (1993).

As in Benton, rather than tell Defendant the charges against him, Blake described observations made of Defendant prior to his arrest. While the instant case differs from Benton in that the observations were not contemporaneous with the arrest, the Court nonetheless finds that "it would be unreasonable to conclude that the police [in this situation] created circumstances likely to elicit a statement from Defendant." Benton, 996 F.2d at 644. Accordingly, the Court holds that Defendant's statements to Special Agent Blake were not the product of a custodial interrogation or its functional equivalent. Because Defendant was not interrogated, whether he knowingly, voluntarily and intelligently waived his Miranda rights need not be determined. See Innis, supra; see also Alston, supra (both a custodial setting and official interrogation are necessary to invoke a defendant's Miranda rights).

**C. The Seizure and Search of the Cell Phone and Pager**

Next, Defendant argues that the subsequent search of his cell phone and pager, to wit, the recording of the numbers contained within each without a warrant violated his constitutional rights. Again, the Court disagrees.

This Court has previously held that the search of a pager incident to a lawful arrest is valid.

United States v. Lynch, 908 F.Supp. 284 (D.V.I. 1995). In Lynch, the Court held that "the search and retrieval of the telephone numbers from [the defendant's] pager was justified as being incident to a valid arrest, even though [the defendant] had a reasonable expectation of privacy in the contents of the pager." Id. at 287. This Court likened the search of the contents of a pager incident to an arrest to the search of the contents of an arrestee's wallet or address book incident to an arrest. Because the search of a "person" has been held to include a person's wallet or address book, the Court found that the search of the defendant's pager was a search of his "person" and thus was valid. Id. at 288-289. Similar to the facts of Lynch, Defendant's pager and cell phone were seized upon Defendant's arrest and the numbers from the devices were obtained soon thereafter. Accordingly, the Court shall not suppress the pager, cell phone or the recordings of the numbers stored therein.

**III. Conclusion**

Edinborough's statements to Special Agent Blake will not be suppressed as they were not a product of a custodial interrogation. Rather, Edinborough's statements were gratuitous. Edinborough's cell phone, pager and the phone numbers stored therein will also not be suppressed because the seizure and subsequent search of these items falls within the search incident-to-arrest exception to the warrant requirement.

**ENTER:**

**DATED:** June 16, 2005

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**RAYMOND L. FINCH**
**CHIEF U.S. DISTRICT JUDGE**

**ATTEST:**

Wilfredo F. Morales
CLERK OF THE COURT

**By: _____**
**Deputy Clerk**

cc: Honorable Geoffrey Barnard
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